

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 SAMUEL RODRIGUEZ,

11 Defendant.

Case No. 2:12-cr-00158-KJD-PAL
2:12-cr-00220-KJD-PAL
2:16-cv-01332-KJD
2:16-cv-01333-KJD

ORDER

12
13 Presently before the Court are Defendant's Motions to Vacate under 28 U.S.C. § 2255
14 filed in case 2:12-cr-00158-KJD-PAL (the illegal reentry case) as Docket No. 43/44 and 2:12-cr-
15 00220-KJD-PAL (the supervised release case) as Docket No. 31.

16 **Background**

17 Defendant Samuel Rodriguez pled guilty to the separate offense of attempted reentry of
18 removed alien in violation of 8 U.S.C. § 1326 in both cases. On April 2, 2013, Defendant was
19 sentenced to a term of 74 months' custody in the illegal reentry case. (#30). Defendant's
20 advisory sentencing guideline range calculation included a 16-level enhancement pursuant to
21 United States Sentencing Guideline Section 2L1.2(b)(1)(A)(ii) for a previous removal following
22 a conviction for a "crime of violence." On the same date, he was sentenced to eight (8) months'
23 custody in the supervised release case consecutive to his sentence in the illegal reentry case (#23)
24 Defendant filed the instant motions under 28 U.S.C. § 2255 in both cases on June 13, 2016.

25 **Analysis**

26 Defendant's motions were filed more than one year after his conviction became final in
27 both cases and are therefore untimely pursuant to 28 U.S.C. § 2255(f)(1). Defendant has not
28

1 alleged or demonstrated that any of the alternative limitation periods set forth in Section 2255(f)
2 are applicable with respect to his motion.

3 Defendant contends that his motions are timely pursuant to 28 U.S.C. § 2255(f)(3) in
4 light of Johnson v. United States, 135 S.Ct. 2551 (2015). In Johnson, the Supreme Court struck
5 down the residual clause of the Armed Career Criminal Act (“ACCA”) as unconstitutionally
6 vague. However, the Supreme Court has subsequently held that the Sentencing Guidelines are
7 not subject to a void for vagueness challenge under the Due Process Clause and that Johnson is
8 not applicable to the advisory Guidelines. Beckles v. United States, 137 S.Ct. 886 (2017).
9 Therefore, Johnson is not applicable in these cases and thus cannot serve to extend the
10 limitations period under 28 U.S.C. § 2255(f)(3).

11 Conclusion

12 The Court finds Defendant’s motions to be time barred under 28 U.S.C. § 2255(f).

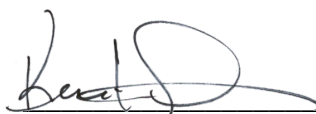
13 Accordingly, IT IS HEREBY ORDERED that Defendant’s Motions to Vacate, Set Aside,
14 or Correct Sentence under 28 U.S.C. § 2255 are **DISMISSED**.

15 IT IS FURTHER ORDERED that the Court DENIES Defendant a certificate of
16 appealability, as Defendant has not made a substantial showing that he has been denied a
17 constitutional right. See 28 U.S.C. § 2253(c)(2) (providing that a certificate shall issue “only if
18 the applicant has made a substantial showing of a denial of a constitutional right”).

19 The Clerk’s Office shall enter **JUDGMENT** accordingly.

20 **IT IS SO ORDERED.**

21 Dated this 30th day of September, 2019.

22
23 

24 Kent J. Dawson
25 United States District Judge
26
27
28